IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1002 OF 2007
IN
EXECUTION APPLICATION NO.487 OF 2006
IN
SUMMARY SUIT NO.1774 OF 2005

Kishordas S. Mehta ....Plaintiff
V/s.
Alaknanda Stainless Ltd. & Ors. ....Defendants

Mr.H.V. Chande for the Plaintiff.

Mr.J.P. Shah i/b M/s.JPS Legal for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 25TH JULY, 2007.

P.C. :

1. The Chamber Summons is taken out by Defendant No.3 to stay the execution of a decree dated 27.6.2006 passed in the above suit till the final disposal of Appeal No.77 of 2007 in B.I.F.R. Case No.111 of 2006.

2. The only contention raised before me is that Defendant No.3 is a guarantor in respect of the dues only of Defendant No.2 and that as a reference is pending before the B.I.F.R. in respect of Defendant No.2 the proceedings in execution even against the guarantor remain stayed.

3. I will proceed on the basis that execution proceedings against a guarantor cannot proceed when there is a reference pending before the B.I.F.R. in respect of the principle debtor. The same however, can be of no assistance to Defendant No.3 as on a proper construction of the guarantee, it is clear that Defendant No.3 also guaranteed the liability of Defendant No.1.

4. The suit was filed to recover the amounts due inter-alia on a bill of exchange drawn by Defendant No.1 and accepted by Defendant No.2. The Plaintiff is the payee of the bill of exchange. The bill of exchange itself mentions that the same had been drawn in connection with the sale of certain goods by Defendant No.1 to Defendant No.2.

5. In respect of the aforesaid transactions, a personal guarantee was executed by Defendant No.3 in favour of the Plaintiff. The guarantee recites that against the purchase by Defendant No.2 a bill of exchange had been drawn by Defendant No.1 and accepted by Defendant No.2 and that Defendant No.2 had also issued a cheque drawn on Indian Overseas Bank in the sum of Rs.21,36,637/- which is the amount of the bill

of exchange. The said personal guarantee reads as under :-

> "In consideration of discounting of Sales Bill of ASL in favour of CTCL by SHRI KISHORE S. MEHTA, I in my personal capacity guarantee the payment of Rs.2136637.00 (Rupees Twenty One Lacs Thirty Six Thousand Six Hundred Thirty Seven only) unconditionally, irrevocably & absolutely on the due date for honouring of cheque no.278700 by CTCL or payment by me as the guarantor of this payment.
>
> This guarantee is issued by me with full knowledge of the payment to be made by CTCL & is valid till the payment of Rs.2136637.00 (Rupees Twenty One Lacs Thirty Six Thousand Six Hundred Thirty Seven only) is received & realized in full with interest overdue interest & any other charges due if any, by the aforesaid Lender namely SHRI KISHORE S. MEHTA. This guarantee is automatically cancelled immediately upon total payment against discounting of the above referred bill."

. That Defendant No.3 guaranteed the liability not merely of Defendant No.2 but also of Defendant No.1 is clear for more than one reason.

6. Firstly, it is stated that the guarantee was "In consideration of discounting of sales bill of ASL (Defendant No.1) in favour of CTCL (Defendant No.2) by SHRI KISHORE S. MEHTA (Plaintiff)". In other words, the guarantee was not only in respect of the dues of Defendant No.2 as acceptor but was in respect of the

discounting of the sales bill itself.

7. Secondly, in consideration of discounting of the sales bill, Defendant No.3 guaranteed not merely the "honouring of cheque No.278700 of CTCL (Defendant No.2)" but also "payment by me (Defendant No.3) as a guarantor of this payment". If Defendant No.3 had guaranteed only the dues of Defendant No.2, there was no need to add the words" or payment by me as the guarantor of this payment". The words "this payment" are not limited to the payment of the acceptor but to the dues under the discounting of the sales bill itself.

8. The second paragraph quoted above, makes this even clearer as the first part of the first sentence thereof merely refers to an admission by Defendant No.3 of his acknowledgement of the payment to be made by Defendant No.2. The second part : "and is valid till payment of Rs.21,36,637/- is received and realized in full with interest" makes it clear that the guarantee is for repayment of the entire amount due under the bill of exchange. There is nothing that limits this liability only qua the acceptor/Defendant No.2.

9. In the circumstances, Defendant No.3 is also liable as a guarantor in respect of the dues of Defendant No.1.

10. In view thereof, it is not necessary for me to consider Mr.Chande’s submission that Defendant No.3 is liable even for the dues of Defendant No.2 and that Section 22 of the said Act does not bar the execution proceedings against Defendant No.3.

11. In the circumstances, the Chamber Summons is dismissed. The sale pursuant to the execution proceedings will be subject to confirmation by the Court. In the circumstance, Defendant No.3 has sufficient time to challenge this order.